

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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RENEWAL OF EXPERIMENTAL CLASSIFICATION AND
FEES FOR WEIGHT-AVERAGED NONLETTER-SIZE
BUSINESS REPLY MAIL, 1999

Docket No. MC99-1

**MOTION OF THE UNITED STATES POSTAL SERVICE
TO ESTABLISH PROCEDURAL MECHANISMS CONCERNING SETTLEMENT**
(March 10, 1999)

The United States Postal Service hereby moves that the Commission establish certain procedural mechanisms designed to encourage the parties to consider expeditious resolution of the issues in this proceeding, based upon a proposed Stipulation and Agreement, which would allow the Commission to expedite its consideration of the Postal Service's Request. The Postal Service also hereby appends to this Motion the proposed Stipulation and Agreement for consideration by all parties which intervene in this proceeding.

Background

As a result of proceedings in Docket No. MC97-1, experimental classification and fees for weight-averaged nonletter-size Business Reply Mail (BRM) were implemented on June 8, 1997, and are scheduled to expire on June 7, 1999. The very limited purpose and scope of the Docket No. MC99-1 request is to extend the duration of the experimental classification and fees for weight-averaged nonletter-size BRM. Concurrently, Docket No. MC99-2 provides an opportunity to fully explore costing and pricing issues related to the permanent establishment of a classification and fees for weight-averaged nonletter-size BRM.

The Postal Service considers that, by means of a Stipulation and Agreement among the parties which intervene in the instant proceeding, an opportunity exists to reach an expedited conclusion regarding its proposal to re-establish the soon-to-expire experimental classification and fees for weight-averaged nonletter-size BRM.

Accordingly, the Postal Service requests that the Commission enter an Order which establishes procedures delineated below for consideration of the Stipulation and Agreement which is being proposed for resolution of the Request in this proceeding.

Proposed Mechanism For Settlement

As demonstrated by the Request in Docket No. MC99-2, the Postal Service is satisfied that the establishment of a permanent weight-averaged nonletter-size BRM classification and fees at the earliest feasible date would be in accordance with the policies of the Postal Reorganization Act. However, as explained in the Docket No. MC99-1 testimony of Postal Service witness Kiefer (USPS-T-1), even assuming the most expeditious resolution of the Docket No. MC99-2 Request by the Commission and the Postal Service Board of Governors, the Postal Service does not anticipate being able to resolve all material administrative and technical issues related to implementation of a permanent classification and fees in time for such implementation to occur immediately after the June 7, 1999, termination of the current nonletter-size BRM experiment. Thus, the purpose of the request in Docket No. MC99-1 is to obtain the authority to extend the effective date of the experimental classification and fees for weight-averaged nonletter-size BRM and to continue the experiment for a period long enough to ensure resolution of those administrative and technical issues before implementation of any classification and fees resulting from Docket No. MC99-2. It is

expected that the requested extension will provide ample time for the Postal Service to resolve these outstanding implementation issues.

The Postal Service anticipates that any discovery in Docket No. MC99-1 related to the requested renewal of the weight-averaging experiment might be relatively limited in duration and scope. Should any occur, it could be initiated, formally or otherwise, by participants immediately upon their intervention in the instant proceeding and could permit them to decide what course to take in response to the proposed Stipulation and Agreement.¹

The Postal Service encourages all participants in the instant docket to consider the proposed Stipulation and Agreement (appended to this Motion) which seeks to expedite the resolution of this proceeding. To promote this opportunity for expedition, the Postal Service moves that the Commission include the procedures listed below in its formal public notice concerning this proceeding or give notice of their proposal by the Postal Service.

Without treading upon the due process rights of any participants in the instant proceeding, the Commission can issue an Order establishing the following procedures for consideration of the proposed Stipulation and Agreement which is appended to this Motion and which is being served upon all participants who obtain a copy of the Docket No. MC99-1 Request. The Postal Service suggests that the Order:

- (1) enter the Postal Service's Request (with associated attachments), the

¹ In the interest of enhancing the expedition of this proceeding, the Postal Service intends to respond to any discovery and information requests related to its extension request within seven calendar days of service.

testimony and exhibits filed with this Request, and the Stipulation and Agreement into the record in this docket;

(2) give parties until March 29, 1999, to intervene;

(3) give notice of a formal pre-hearing conference to be convened on March 30, 1999, at 11:00 a.m.;

(4) make the Commission hearing room available to the Postal Service and the participants on that date at 9:30 a.m. as the venue for an informal off-the-record meeting to discuss the proposed Stipulation and Agreement and related matters in advance of the pre-hearing conference;

(5) provide notice to intervenors that, if they wish to contest re-establishment of the experimental classifications and fees in the Postal Service's Request and the proposed Stipulation and Agreement, they must, by April 2, 1999, file a statement of their intention to do so. Any such statement should identify with specificity the classification and fees and other issues contested, and state whether the intervenor intends to offer evidence on any such classification, fees, and issues.

(6) If no such statements are filed, the record in this case shall be closed and the case submitted to the Commission for summary adjudication;

(7) If one or more such statements are filed, the filing parties shall have until April 9, 1999, to conduct discovery of the Postal Service;

(8) The same parties shall have until April 23, 1999, to submit testimony and/or pleadings seeking to establish either that, owing to the existence of genuine issues of material fact, the proceeding is not suited to summary adjudication or that the Stipulation and Agreement is arbitrary, capricious, or otherwise not in accordance with

applicable law. Responsive pleadings by other parties shall be due on April 30, 1999. The record shall then be closed provisionally and the issues adjudicated by the Commission.

(9) If the Commission finds that there are no genuine issues of material fact, it will promptly notify the parties of such and indicate its intention to issue a Recommended Decision accepting the classification and fees proposed in the Request and the Stipulation and Agreement.

(10) If the Commission finds (a) that there are genuine issues of material fact that prevent summary adjudication, or (b) that there are no genuine issues of material fact, but that it declines to recommend renewal of the experimental classification and fees for weight-averaged nonletter-size BRM proposed in the Docket No. MC99-1 Request and the Stipulation and Agreement, then it shall promptly notify the parties, identifying the genuine issues of material fact or other reasons for declining to adopt the proposed classifications and fees, and immediately set an expedited schedule for such additional discovery and hearings which may be necessary for litigation of those matters. During that litigation period, any party to the Stipulation and Agreement may fully litigate the matters identified as disputed by the Commission, including discovery on the Postal Service with respect solely to those issues and presentations of testimony without withdrawing from the Stipulation and Agreement, provided that such party (a) continues to support a Commission recommendation of the classifications and fees proposed in the Postal Service's Request and (b) agrees to remain bound by the terms of the Stipulation and Agreement.

(11) If none of the actions by the Commission provided for in paragraphs 9 and 10 above have occurred by May 7, 1999,² any party to the Stipulation and Agreement may determine not to be bound further by that agreement and must provide written notice to all parties of this fact within three (3) business days of the above date. Any exercise of such right by one or more signatories shall not affect the operation of the Stipulation and Agreement as to other signatories.

The Postal Service considers that its Request in this docket, the accompanying testimony and exhibits of witness Kiefer (USPS-T-1), and any documents incorporated therein by reference, provide all data reasonably called for in an expedited proceeding focused on the very limited objective of re-establishing a portion of the current nonletter-size Business Reply Mail experiment beyond its scheduled June 7, 1999, expiration date.³ Witness Kiefer's Docket No. MC99-1 testimony (USPS-T-1) demonstrates that there are compelling grounds for a continuation of the experiment and that the current experimental classification and fees for weight-averaged nonletter-size BRM, if re-established, would continue to satisfy the applicable classification and rate criteria of the Postal Reorganization Act.

Accordingly, the Postal Service requests that the Commission consider the adoption of the procedural mechanisms proposed herein, which reflect the expectation

² The Postal Service desires to allow adequate time for the Commission to take action under either paragraph 9 or 10, but is strongly in favor of expedited resolution of this docket. It is thus hoped that the Commission would be able to act prior to the suggested May 7, 1999, date.

³ Simultaneously with this Motion, the Postal Service has filed motions seeking waivers of Rules 64(h) and 67c of the Commission's Rules Of Practice And Procedure.


of the Postal Service that the instant proceeding has the potential to proceed expeditiously to a resolution.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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March 10, 1999
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CERTIFICATE OF SERVICE

I hereby certify that I have attached a copy of the foregoing (with the appended Stipulation and Agreement and Signature Pages) to each copy of the Request in this proceeding and that the Request and all related documents filed today will be served upon all other participants upon notice to the Postal Service of their intervention in this proceeding.


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